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and the negotiability of the note is not affected by provisions looking to the preservation of the security alone.<sup>6</sup>

(3) Note and mortgage construed entirely apart. If the note is negotiable in itself it is not affected by any provisions in the mortgage, whether referring to the debt or the security, since they are not made part of the promise but are secured solely by the mortgage lien.<sup>7</sup>

The second class is the more widely followed but the third has the advantage of giving the fullest effect to the two instruments. It is subject to the criticism that instruments executed together are ordinarily to be construed together where the terms of one affect the other. California has even a stricter rule than that of the first class, all notes secured by mortgage, regardless of its terms, being non-negotiable.<sup>8</sup> In practically all the states the security may be disregarded and suit be brought on the note alone.<sup>9</sup> California, however, allows but one action on a debt secured by mortgage,<sup>10</sup> a provision which would have to be changed to give full effect to the Negotiable Instruments Law, which will undoubtedly be proposed at the forthcoming session of the legislature. Wherever the note is held negotiable the security, being ancillary to the debt, follows the note free from equities into the hands of a bona fide purchaser,<sup>11</sup> thus practically imparting negotiability to an otherwise non-negotiable instrument.

J. S. M., Jr.

CARRIERS: INJURY TO PASSENGER: BURDEN OF PROOF.—In *Steele v. Pacific Electric Railway Company*<sup>1</sup> the plaintiff was injured by falling to the ground while attempting to alight from defendant's car. The instruction to the following effect was held to be error: proof of injury to plaintiff on a car of defendant establishes for the plaintiff a prima facie case.

<sup>6</sup> *Des Moines Sav. Bank v. Arthur* (Iowa, 1913), 143 N. W. 556; *Thorpe v. Mindeman*, supra, note 2; *Zollman v. Jackson Trust & Sav. Bank* (Ill., 1909), 32 L. R. A. (N. S.) 858, n.

<sup>7</sup> *Page v. Ford* (Ore., 1913), 131 Pac. 1013, 45 L. R. A. (N. S.) 247. *Thorpe v. Mindeman*, supra, note 2, declined to pass on the question of whether provisions for payment of taxes on the note would render it non-negotiable.

<sup>8</sup> *Meyer v. Weber* (1901), 133 Cal. 681, 65 Pac. 1110; *National Hardware Co. v. Sherwood* (1913), 165 Cal. 1, 130 Pac. 881.

<sup>9</sup> *Jones on Mortgages*, § 1220; *Brooke v. Struthers*, supra, note 5.

<sup>10</sup> Cal. Code Civ. Proc., § 726; *Meyer v. Weber*, supra, note 8. It is doubtful whether this rule applies to other than mortgage security. It does not apply to notes secured by pledge, *Ehrlich v. Ewald* (1884), 66 Cal. 97, 4 Pac. 1062, and it has been suggested that it may not apply to trust deeds, *Herbert Kraft Co. v. Bryan* (1903), 140 Cal. 73, 73 Pac. 745.

<sup>11</sup> *Frost v. Fisher* (1899), 13 Colo. App. 322, 58 Pac. 872; *Taylor v. American Nat. Bank* (1912), 63 Fla. 631, 57 So. 678.

<sup>1</sup> (Oct. 1, 1914), 48 Cal. Dec. 254, 143 Pac. 718.

The plaintiff failed to distinguish between an injury due to defects in the appliances of the carrier, or to collision, on proof of which the burden is put upon the carrier of proving that he was not negligent,<sup>2</sup> and an injury due to some cause that is as well within the knowledge and control of the plaintiff as of the defendant, in which case it is necessary that the plaintiff show that the injury was caused by some negligent act of the defendant.<sup>3</sup> The principal case was of the latter type, and the burden of proof did not devolve upon the defendant until the plaintiff had herself shown that the injury was occasioned by a fall caused by the negligent starting of the car by defendant.<sup>4</sup> No presumption of negligence arises from the mere fact that the passenger was injured.<sup>5</sup>

F. L. F.

CONSTITUTIONAL LAW: COMMERCE CLAUSE: STATE REGULATION OF RATES FOR DISTRIBUTION OF NATURAL GAS DRAWN IN PART FROM OTHER STATES.—The United States District Court for the Northern District of West Virginia holds, in *Manufacturer's Light and Heat Company v. Ott*,<sup>1</sup> that a state may regulate charges for the sale of natural gas, notwithstanding that the supply is drawn in part from other states. The court avoids a definite ruling as to the pertinence of the commerce clause, but contents itself with deciding that, in any event, the subject-matter is not within the exclusive control of Congress. The case is apparently one of first impression.

It is a fundamental principle of constitutional law that Congress has exclusive power over commerce among the states where the subjects upon which the power is exerted are "in their nature national, or admit only of one uniform system or plan of regulation".<sup>2</sup> Without this field is a large, ill-defined area of legislative authority within which the states, may, in the absence of conflict-

<sup>2</sup> MacDougall v. Central R. R. Co. (1883), 63 Cal. 431; McCurrie v. Southern Pac. Co. (1898), 122 Cal. 558, 55 Pac. 324; Boone v. Oakland Transit Co. (1903), 139 Cal. 490, 73 Pac. 243; Kline v. Santa Barbara Consol. Ry. Co. (1907), 150 Cal. 741, 90 Pac. 125; Denver & Rio Grande Ry. Co. v. Fotheringham (1902), 17 Colo. App. 410, 68 Pac. 978; North Chicago St. R. R. Co. v. Schwartz (1899), 82 Ill. App. 493.

<sup>3</sup> Chicago Union Traction Co. v. Straud (1904), 114 Ill. App. 479; Chicago City Ry. Co. v. Catlin (1897), 70 Ill. App. 97; Bartley v. Metropolitan St. Ry. Co. (1899), 148 Mo. 124, 49 S. W. 840; Lincoln Traction Co. v. Shepherd (1905), 74 Neb. 369, 104 N. W. 882, 107 N. W. 764; Griffen v. Manice (1901), 166 N. Y. 188, 82 Am. St. Rep. 630, 59 N. E. 925; Saunders v. Chicago etc. Co. (1894), 6 S. D. 40, 60 N. W. 148.

<sup>4</sup> Chicago City Ry. Co. v. Catlin (1897), 70 Ill. App. 97.

<sup>5</sup> Wyatt v. Pacific Electric Ry. Co. (1909), 156 Cal. 170, 103 Pac. 892.

<sup>1</sup> (July 29, 1914), 215 Fed. 940.

<sup>2</sup> Cooley v. Board of Wardens (1851), 12 How. 299, 13 L. Ed. 996; Cook v. Penn. (1878), 97 U. S. 566, 24 L. Ed. 1015; Leloup v. Port of Mobile (1888), 127 U. S. 640, 32 L. Ed. 311, 8 Sup. Ct. Rep. 1380.